AN ACT

To provide for the protection of unaccompanied alien children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Unaccompanied Alien Child Protection Act of 2005”.

109TH CONGRESS 1ST SESSION  S. 119
(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

**TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION**

Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.

**TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL**

Sec. 201. Child advocates.
Sec. 203. Preservation of law enforcement authority.
Sec. 204. Effective date; applicability.

**TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN**

Sec. 301. Special immigrant juvenile classification.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.
Sec. 304. Effective date.

**TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS**

Sec. 401. Guidelines for children’s asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

**TITLE V—AUTHORIZATION OF APPROPRIATIONS**

Sec. 501. Authorization of appropriations.

**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002**

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 602. Technical corrections.
Sec. 603. Effective date.

**SEC. 2. DEFINITIONS.**

(a) **IN GENERAL.**—In this Act:
(1) COMPETENT.—The term “competent”, in reference to counsel, means an attorney, or a representative authorized to represent unaccompanied alien children in immigration proceedings or matters, who—

(A) complies with the duties set forth in this Act;

(B)(i) is properly qualified to handle matters involving unaccompanied alien children; or

(ii) is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters; and

(C) if an attorney—

(i) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia; and

(ii) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law.

(2) DEPARTMENT.—The term “Department” means the Department of Homeland Security.

(3) DIRECTOR.—The term “Director” means the Director of the Office.

(5) **Secretary.**—The term “Secretary” means the Secretary of Homeland Security.

(6) **Unaccompanied alien child.**—The term “unaccompanied alien child” has the meaning given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) **Voluntary agency.**—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director.

(b) **Amendments to the Immigration and Nationality Act.**—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(51) The term ‘unaccompanied alien child’ means a child who—

“(A) has no lawful immigration status in the United States;

“(B) has not attained the age of 18; and

“(C) with respect to whom—
“(i) there is no parent or legal guardian in the United States; or
“(ii) no parent or legal guardian in the United States is available to provide care and physical custody.
“(52) The term ‘unaccompanied refugee children’ means persons described in paragraph (42) who—
“(A) have not attained the age of 18; and
“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”.

(c) Rule of Construction.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) Unaccompanied Children Found Along the United States Border or at United States Ports of Entry.—
(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child’s application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child’s country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with
paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in this sub-
paragraph;

(ii) such child does not have a fear of returning to the child’s country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child’s country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child’s application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child’s native language—

(i) to consult with a consular officer from the child’s country of nationality or country of last habitual residence prior to repatriation; and
(ii) to consult, telephonically, with the Office.

(3) Rule for apprehensions at the border.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).

(b) Care and custody of unaccompanied alien children found in the interior of the United States.—

(1) Establishment of jurisdiction.—

(A) In general.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) Exception for children who have committed crimes.—Notwithstanding subparagraph (A), the Department shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immi-
gration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pend-
ing; or

(ii) has been convicted of any such fel-
o ny.

(C) Exception for children who threaten national security.—Notwith-
standing subparagraph (A), the Department shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) Trafficking victims.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccom-
pa nied alien child who is eligible for services au-
 thorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the cus-
tody of the Office.

(2) Notification.—

(A) In general.—The Secretary shall promptly notify the Office upon—
(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Department is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Department that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Department who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—
(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Department pursuant to subparagraph (B) or (C) of paragraph (1), following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DEPARTMENT.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Department.
(C) Promptness of Transfer.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(e) Age Determinations.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien’s eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made in accordance with section 105, unless otherwise specified in subsection (b)(2)(B).

(d) Access to Alien.—The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary to ensure a prompt determination of the age of such alien, if necessary under subsection (b)(2)(B).

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) Placement Authority.—
(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4), section 103(a)(2), and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who
is a qualified adult or entity and promulgate
regulations in accordance with such decision.

(2) Suitability assessment.—

(A) General requirements.—Notwith-
standing paragraph (1), and subject to the re-
quirements of subparagraph (B), no unaccomp-
panied alien child shall be placed with a person
or entity described in any of subparagraphs (A)
through (F) of paragraph (1) unless the Direc-
tor certifies, in writing, that the proposed cus-
todian is capable of providing for the child’s
physical and mental well-being, based on—

(i) with respect to an individual
custodian—

(I) verification of such individ-
ual’s identity and employment;

(II) a finding that such indi-

vidual has not engaged in any activity
that would indicate a potential risk to
the child, including the activities de-
scribed in paragraph (4)(A);

(III) a finding that such indi-

vidual has no open investigation by a
state or local child protective services
authority due to suspected child abuse or neglect;

(IV) verification that such individual has a plan for the provision of care for the child; and

(V) verification of familial relationship of such individual, if any relationship is claimed; and

(ii) verification of nature and extent of previous relationship;

(iii) with respect to a custodial entity, verification of such entity’s appropriate licensure by the State, county, or other applicable unit of government; and

(iv) such other information as the Director determines appropriate.

(B) HOME STUDY.—

(i) IN GENERAL.—A home study shall be conducted prior to release with respect to each proposed custodian described in any of subparagraphs (A) through (F) of paragraph (1) unless waived by the Director.

(ii) SPECIAL NEEDS CHILDREN.—In the case of a special needs child with a dis-
ability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), a home study shall be conducted to determine if the child’s needs can be properly met by the custodian.

(C) CONTRACT AUTHORITY.—The Director may, by grant or contract, arrange for some or all of the activities under this section to be carried out by—

   (i) an agency of the State of the child’s proposed residence;
   
   (ii) an agency authorized by such State to conduct such activities; or
   
   (iii) an appropriate voluntary or non-profit agency.

(D) DATABASE ACCESS.—In conducting suitability assessments, the Director shall be given access to all relevant information in the appropriate Federal, State, and local law enforcement and immigration databases.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

   (A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is
placed with any person or entity other than a parent or legal guardian, and subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall—

(i) assess the suitability of placing the child with the parent or legal guardian; and

(ii) make a written determination on the child’s placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—
(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—Programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of involvement in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of involvement in any activity described in sub-
paragraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, which may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—The Director may award grants to, and enter into contracts with, voluntary agencies to carry out this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(6) REIMBURSEMENT OF STATE EXPENSES.—The Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person’s qualifications under subsection (a)(1).
(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in
an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—

An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—A child shall not be placed with an entity described in section 102(a)(1)(E), unless the entity is licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;
(iii) mental health care, including
treatment of trauma, physical and sexual
violence, or abuse;
(iv) access to telephones;
(v) access to legal services;
(vi) access to interpreters;
(vii) supervision by professionals
trained in the care of children, taking into
account the special cultural, linguistic, and
experiential needs of children in immigra-
tion proceedings;
(viii) recreational programs and activi-
ties;
(ix) spiritual and religious needs; and
(x) dietary needs.

(B) Notification of Children.—Regu-
lations promulgated under subparagraph (A)
shall provide that all children are notified of
such standards orally and in writing in the
child’s native language.

(b) Prohibition of Certain Practices.—The Di-
rector and the Secretary shall develop procedures prohib-
iting the unreasonable use of—
(1) shackling, handcuffing, or other restraints
on children;
(2) solitary confinement; or

(3) pat or strip searches.

(c) Rule of Construction.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) Country Conditions.—

(1) Sense of Congress.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) Assessment of Conditions.—

(A) In General.—The annual Country Reports on Human Rights Practices published by the Department of State shall contain an assessment of the degree to which each country...
protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Department shall consult the Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;

(B) a description of the type of immigration relief sought and denied to such children;
(C) a statement of the nationalities, ages, and gender of such children;

(D) a description of the procedures used to effect the removal of such children from the United States;

(E) a description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin; and

(F) any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) PROCEDURES.—

(1) IN GENERAL.—The Director shall develop procedures, in consultation with the Secretary, to make a prompt determination of the age of an alien, to be used—

(A) by the Department, with respect to aliens in the custody of the Department; and

(B) by the Office, with respect to aliens in the custody of the Office.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—
(A) permit the presentation of multiple forms of evidence, including testimony of the alien, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(b) Prohibition on Sole Means of Determining Age.—Radiographs or the attestation of an alien shall not be used as the sole means of determining age for the purposes of determining an alien’s eligibility for treatment under this Act or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(c) Rule of Construction.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the Government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect on the date which is 90 days after the date of enactment of this Act.
TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL

SEC. 201. CHILD ADVOCATES.

(a) Establishment of Child Advocate Program.—

(1) Appointment.—The Director may appoint a child advocate, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a child advocate under this paragraph.

(2) Qualifications of Child Advocate.—

(A) In general.—No person shall serve as a child advocate unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) Prohibition.—A child advocate shall not be an employee of the Department, the Of-
(3) DUTIES.—The child advocate shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child’s age;

(B) investigate the facts and circumstances relevant to the child’s presence in the United States, including facts and circumstances—

(i) arising in the country of the child’s nationality or last habitual residence; and

(ii) arising subsequent to the child’s departure from such country;

(C) work with counsel to identify the child’s eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child’s custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that—

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under
the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that all information is conveyed to the child in an age-appropriate manner; and

(F) report factual findings relating to—

(i) information collected under subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information collected under subparagraph (D).

(4) Termination of Appointment.—The child advocate shall carry out the duties described in paragraph (3) until the earliest of the date on which—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or
(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS.—The child advocate—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and un-
usual circumstances warranting the transfer of
such child before such notification.

(b) Training.—

(1) In General.—The Director shall provide
professional training for all persons serving as
guardians ad litem under this section.

(2) Training Topics.—The training provided
under paragraph (1) shall include training in—

(A) the circumstances and conditions that
unaccompanied alien children face; and

(B) various immigration benefits for which
such alien child might be eligible.

(c) Pilot Program.—

(1) In General.—Not later than 180 days
after the date of enactment of this Act, the Director
shall establish and begin to carry out a pilot pro-
gram to test the implementation of subsection (a).

(2) Purpose.—The purpose of the pilot pro-
gram established under paragraph (1) is to—

(A) study and assess the benefits of pro-
viding guardians ad litem to assist unaccom-
panied alien children involved in immigration
proceedings or matters;
(B) assess the most efficient and cost-effective means of implementing the child advocate provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) Scope of program.—

(A) Selection of site.—The Director shall select 3 sites in which to operate the pilot program established under paragraph (1).

(B) Number of children.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) Report to Congress.—Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

SEC. 202. COUNSEL.

(a) Access to Counsel.—
(1) **In General.**—The Director should ensure, to the extent practicable that all unaccompanied alien children in the custody of the Office or the Department, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) **Pro Bono Representation.**—To the maximum extent practicable, the Director should—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) **Development of Necessary Infrastructures and Systems.**—For purposes of this subsection, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) **Contracting and Grant Making Authority.**—
(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—
(A) Development of Guidelines.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children’s asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) Purpose of Guidelines.—The guidelines developed under subparagraph (A) shall be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) Implementation.—The Executive Office for Immigration Review shall adopt the guidelines developed under subparagraph (A) and submit the guidelines for adoption by national, State, and local bar associations.

(b) Duties.—Counsel under this section shall—
(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Department;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Department; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) Access to Child.—

(1) In general.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) Restriction on transfers.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child’s placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) Notice to Counsel During Immigration Proceedings.—
(1) **IN GENERAL.**—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) **OPPORTUNITY TO CONSULT WITH COUNSEL.**—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) **ACCESS TO RECOMMENDATIONS OF CHILD ADVOCATE.**—Counsel shall be given an opportunity to review the recommendation by the child advocate affecting or involving a client who is an unaccompanied alien child.

(f) **COUNSEL FOR UNACCOMPANIED ALIEN CHILDREN.**—Nothing in this Act requires the United States to pay for counsel to any unaccompanied alien child.

SEC. 203. **PRESERVATION OF LAW ENFORCEMENT AUTHORITY.**

(a) **IN GENERAL.**—The child advocate or counsel appointed under this title shall not interfere with Federal investigators or prosecutors in a Federal criminal inves-
tigation or prosecution in which the child is a victim or witness.

(b) DEFINITION.—In subsection (a), the term “interfere with” shall include—

(1) restricting access to a victim or witness;

(2) encouraging noncooperation with Federal investigators or prosecutors; and

(3) being present during interviews of the child by Federal investigators or prosecutors without the permission of the investigators or prosecutors.

SEC. 204. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.

(a) J CLASSIFICATION.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:
“(J) an immigrant, who is 18 years of age or younger on the date of application for the classification and who is present in the United States—

“(i) who by a court order supported by written findings of fact, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or has been legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, abandonment, or a similar basis found under State law;

“(ii) for whom it has been determined by written findings of fact in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

“(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and
Human Services has certified to the Director of
U.S. Citizenship and Immigration Services that
the classification of an alien as a special immi-
grant under this subparagraph has not been
made solely to provide an immigration benefit
to that alien,
except that no natural parent or prior adoptive par-
et of any alien provided special immigrant status
under this subparagraph shall thereafter, by virtue
of such parentage, be accorded any right, privilege,
or status under this Act;’’.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A)
of the Immigration and Nationality Act (8 U.S.C.
1255(h)(2)(A)) is amended to read as follows:
“(A) paragraphs (4), (5)(A), (6)(A),
(7)(A), 9(B), and 9(C)(i)(I) of section 212(a)
shall not apply; and’’.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has
been granted relief under section 101(a)(27)(J) of the Im-
migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),
may be eligible for funds made available under section
412(d) of that Act (8 U.S.C. 1522(d)) until such time as
the child attains the age designated in section
412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or
until the child is placed in a permanent adoptive home, whichever occurs first.

(d) Transition Rule.—Notwithstanding any other provision of law, any child described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) who filed an application for special immigrant juvenile classification before the date of enactment of this Act and who was 19, 20, or 21 years of age on the date such application was filed shall not be denied such classification after the date of enactment of this Act because of such alien’s age.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) Training of State and Local Officials and Certain Private Parties.—

(1) In General.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training materials, and if requested, direct training, to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children.

(2) Curriculum.—The training shall provide education on the processes pertaining to unaccom-
panied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(3) **VIDEO CONFERENCING.**—If direct training is requested under this subsection, such training may be conducted through video conferencing.

(b) **TRAINING OF DEPARTMENT PERSONNEL.**—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Department who come into contact with unaccompanied alien children. Training for Border Patrol agents and immigration inspectors shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

**SEC. 303. REPORT.**

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committee on the Judiciary of
the Senate and the Committee on the Judiciary of the
House of Representatives that contains—

(1) data related to the implementation of sec-
279);

(2) data regarding the care and placement of
children in accordance with this Act;

(3) data regarding the provision of child advoca-
cate and counsel services under this Act; and

(4) any other information that the Director or
the Secretary of Health and Human Services deter-
mines to be appropriate.

SEC. 304. EFFECTIVE DATE.

The amendment made by section 301 shall apply to
all aliens who were in the United States before, on, or
after the date of enactment of this Act.

TITLE IV—CHILDREN REFUGEE
AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN’S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress—

(1) commends the former Immigration and
Naturalization Service for its issuance of its “Guide-
lines for Children’s Asylum Claims”, dated Decem-
ber 1998, and encourages and supports the imple-
mentation of such guidelines by the Department in
an effort to facilitate the handling of children’s affir-
mative asylum claims;

(2) commends the Executive Office for Immi-
grant Review of the Department of Justice for its
issuance of its “Guidelines for Immigration Court
Cases Involving Unaccompanied Alien Children”,
dated September 2004, and encourages and supports
the continued implementation of such guidelines by
the Executive Office for Immigration Review in its
handling of children’s asylum claims before immigra-
tion judges; and

(3) understands that the guidelines described in
paragraph (2) do not specifically address the issue
of asylum claims, but go to the broader issue of un-
accompanied alien children in general.

(b) TRAINING.—

(1) IMMIGRATION OFFICERS.—The Secretary
shall provide periodic comprehensive training under
the “Guidelines for Children’s Asylum Claims” to
asylum officers and immigration officers who have
contact with children in order to familiarize and sen-
sitize such officers to the needs of children asylum
seekers.

(2) IMMIGRATION JUDGES.—The Executive Of-

fice for Immigration Review shall—
(A) provide periodic comprehensive training under the “Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children” and the “Guidelines for Children’s Asylum Claims” to immigration judges and members of the Board of Immigration Appeals; and

(B) redistribute to all Immigration Courts the “Guidelines for Children’s Asylum Claims” as part of its training of immigration judges.

(3) USE OF VOLUNTARY AGENCIES.—Voluntary agencies shall be allowed to assist in the training described in this subsection.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

“(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—
“(A) the number of unaccompanied refugee children, by region;

“(B) the capacity of the Department of State to identify such refugees;

“(C) the capacity of the international community to care for and protect such refugees;

“(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

“(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

“(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.”.

(b) Training on the Needs of Unaccompanied Refugee Children.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking “and” after “countries,”; and

(2) inserting before the period at the end the following: “, and instruction on the needs of unaccompanied refugee children”.

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SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) Placement in Removal Proceedings.—Any unaccompanied alien child apprehended by the Department, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) Exception From Time Limit for Filing Asylum Application.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

“(E) Applicability.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51).”.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—
(1) the provisions of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) the provisions of this Act.

(b) Availability of Funds.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) Additional Responsibilities of the Director.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking “and” at the end;

(2) in subparagraph (L), by striking the period at the end and inserting “, including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and”; and

(3) by adding at the end the following:
“(M) ensuring minimum standards of care for all unaccompanied alien children—

“(i) for whom detention is necessary; and

“(ii) who reside in settings that are alternative to detention.”.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

“(4) AUTHORITY.—In carrying out the duties under paragraph (3), the Director is authorized to—

“(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2005; and

“(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2005, including the power to—

“(i) declare providers to be in breach and seek damages for noncompliance;

“(ii) terminate the contracts of providers that are not in compliance with such conditions; and
“(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.”.

SEC. 602. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking “paragraph (1)(G)” and inserting “paragraph (1)”;

(2) by adding at the end the following:

“(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.”.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

Passed the Senate December 22 (legislative day, December 21), 2005.

Attest:

Secretary.
AN ACT

To provide for the protection of unaccompanied alien children, and for other purposes.

S. 119